

United States Court
Southern District of Texas
FILED

JUN 29 2012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SUGENTINO PERCEL,)	
)	USDC Case No. 4:10-cv-1394
Movant,)	
)	USDC Case No. 4:06-cr-089-4
v.)	
)	
UNITED STATES OF AMERICA,)	Hon. Melinda Harmon, U.S.D.J.
)	
Respondent.)	Hon. Frances Stacy, U.S.M.J.

**MOVANT - APPELLANT'S PRO SE NOTICE OF APPEAL
AND CONTEMPORANEOUS REQUEST FOR CERTIFICATE OF
APPEALABILITY PURSUANT TO RULE 4(a)(1), F.R.A.P. AND 28 U.S.C. §2253**

COMES NOW SUGENTINO PERCEL Movant-Appellant *pro se*, in the above styled and numbered cause and respectfully moves before this Court with his timely Notice of Appeal and Annexed Request for a Certificate of Appealability.

IN SUPPORT THEREOF, Movant-Appellant would show the Court the following facts, circumstances and points of law:

I.

A. Notice of Appeal

On May 3, 2012, and after an evidentiary hearing conducted on April 27, 2012, this Court adopted the Memorandum and Recommendations of the magistrate judge in their entirety, and entered an Order (Doc #561) denying in all respects and dismissing Movant's then pending Motion to Vacate filed pursuant to 28 U.S.C. §2255, collaterally attacking the judgment of this Court.

Accordingly, pursuant to Rule 4(a)(1)(B), Federal Rules of Appellate Procedure

("F.R.A.P.") and 28 U.S.C. §2255(d), Movant-Appellant ("Percel") now timely submits his Notice of Appeal from that Judgment and Order and each and every part thereof.

Percel respectfully and specifically seeks issuance of a Certificate of Appealability ("COA") on the issues and questions set forth below pursuant to 28 U.S.C. §2253(a),(c)(1)(B) & (c)(2-3).

II.

A. Request and Application For Issuance of COA

Pursuant to 28 U.S.C. §2253 and the applicable Local Rules of Court, Percel timely advances his request for COA from this Court on each of the following grounds relative to issues raised within his §2255 Motion, supporting pleadings, this Court's Orders, and as follows:

[1]. First Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by determining that Movant's testimony was not credible at evidentiary hearing when at least three corroborating witnesses also testified to the same events?

[2]. Second Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by adopting the Magistrate's Recommendation that Movant's attorney was not ineffective when viewed under the Supreme Court decisions of *Lafler v. Cooper* and *Missouri v. Frye*?

[3]. Third Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by adopting the Magistrate's Recommendation that Movant's attorney was not ineffective in failing to discuss and advise the relevant application of the Guidelines and how they would affect the ultimate sentence imposed including the provisions of the Safety Valve, any cooperation for reduction under §5K1.1, and acceptance of responsibility?

[4]. Fourth Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by adopting the Magistrate's Recommendation that Movant's attorney was not ineffective for his failures in contacting several trial and sentencing witnesses on Movant's behalf?

[5]. Fifth Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by adopting the Magistrate's Recommendation that Movant's attorney was not ineffective for his failures in preparing Movant for trial when at all times relevant he was locked in segregation and only permitted one phone call per month prior to trial?

[6]. Sixth Question Presented on Request and Application for COA

Did this Court err or alternatively abuse its discretion by adopting the Magistrate's Recommendation that Movant's was not permitted to "revisit an issue decided on appeal" even though couched as ineffective assistance of counsel and when considered under the holdings of *Sanders v. United States*?

III.

Accordingly, Percel advances that he has presented viable and compelling questions that encompass the required "substantial showing of the denial of a constitutional right." He furthers that "jurists of reason would find this court's denial of those claims debatable or wrong."¹ Therefore, Percel seeks certification of the questions posed or some derivative thereof.

WHEREFORE, premises considered and for good cause shown, Movant-Appellant Sugentino Percel respectfully requests that this Court issue a COA as to each or any of his claims and questions as advanced above and set forth and argued in

¹

See, *Slack v. McDaniel* 529 U.S. 473, 484 (2000) and *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

his 28 U.S.C. §2255 Motion to Vacate, Memorandum of Law, and supporting pleadings.

Dated: June 25, 2012

Respectfully submitted,

By: Sugentino Percel
Sugentino Percel
Movant-Appellant *pro se*
No. 39433-179
FCI Elkton - Low
P.O. Box 10
Lisbon, OH 44432

DECLARATION

I SUGENTINO PERCEL herein declare under penalty of perjury that I am the Movant *pro se* in the above stated matter and that the foregoing is true and correct based upon information and belief and not willfully false. I make this declaration pursuant to 28 U.S.C. § 1746 this 25 day of June, 2012.

By: Sugentino Percel
Sugentino Percel
Movant-Appellant *pro se*

CERTIFICATE OF SERVICE

I herein certify that a true copy of the foregoing was sent via first class mail with postage prepaid and affixed thereon to : The Clerk of the Court and the Office of the U.S. Attorney, Attn. James L. Turner, AUSA, 1000 Louisiana Street, Suite 2300 at Houston, Texas 77002 this 25 day of June, 2012, pursuant to the holdings of *Houston v. Lack*.

By: Sugentino Percel
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